



OFFICE OF THE  
**DISTRICT ATTORNEY**  
**JEFFERSON COUNTY**  
COURTHOUSE, ROOM #225      JEFFERSON, WISCONSIN 53549  
Telephone 920-674-7220  
Fax 920-674-7127



December 19, 2023  
For Immediate Release  
Contact:  
Monica J. Hall  
Jefferson County District Attorney  
(920) 674-7220

Jefferson County District Attorney Monica J. Hall announced today that the actions of Watertown Police Officer James Simon (who used deadly force) and Watertown Police Officer Nathan Zubke (who did not use deadly force) on Wednesday October 18, 2023 were lawful and reasonable acts in defense of self and others; therefore, there will be no criminal charges in relation to the incident resulting in the death of Justin C. Whitten on October 18, 2023 at 1300 Western Avenue in the City of Watertown, Jefferson County, Wisconsin.

Wisconsin law allows all persons, including police officers, to use deadly force in an act of self-defense or defense of others if the person reasonably believed that he or another person face an unlawful interference that created a risk of death or great bodily harm. If, as here, the person's actions are privileged under the law of self-defense/defense of others they cannot be convicted of any crime.

The incident surrounding the death of Justin C. Whitten was investigated by the Wisconsin Department of Justice Division of Criminal Investigation (DCI). Reports, audio recordings and video evidence from DCI and Watertown Police Department, were provided to me, the Jefferson County District Attorney for review. After consideration of the evidence provided in this case and the circumstances surrounding the incident, I found there is no evidence that a crime was committed by any law enforcement officer in this case. I, therefore, will not be filing any criminal charges in this matter.

On 10/18/23 law enforcement officers with the Watertown Police Department were looking for Justin C. Whitten as a suspect in an on-going domestic abuse investigation. Mr. Whitten had made suicidal statements and was believed to be in possession of a firearm. At one point, officers found Mr. Whitten driving a vehicle and attempted a traffic stop with him. However, Mr. Whitten fled from police in his vehicle, going at least 70 miles per hour in a 25 mile per hour zone; that pursuit was terminated. As officers were searching to see if Mr. Whitten crashed after they terminated the pursuit, law enforcement learned Mr. Whitten got out of his vehicle and was on a skateboard.

Officer Nathan Zubke's audio/visual body camera footage from 10/18/23 shows:  
At approximately 3:50:13pm, Officer Zubke was driving his squad car in the vicinity of 1300 Western Avenue in the City of Watertown when he saw an individual he believed was Mr. Whitten on a skateboard. Officer Zubke parked his squad car and got out of the driver's seat in one fluid motion.

Mr. Whitten is in the video on a skateboard in the road near the sidewalk. The video shows Officer Zubke had his duty firearm in his right hand as he got out of his squad car. As Officer Zubke got out of the squad car, he said in an authoritative tone, "Get on the ground right now. Get on the ground. Stop." Mr. Whitten continued to ride his skateboard down the road, away from Officer Zubke.

Officer Zubke started running after Mr. Whitten. As he ran, he asked another person, to his left, "Is that him?" pointing toward Mr. Whitten. Based on footage from Officer Simon's body camera, Officer Zubke was asking Officer Simon, who was driving by in an unmarked squad car, that question. Officer Zubke again commanded, "Stop!" The unmarked squad car being driven by Officer Simon pulled ahead of Mr. Whitten and blocked Mr. Whitten's path as Mr. Whitten continued to skateboard away from Officer Zubke.

Mr. Whitten, who was blocked from being able to continue to skateboard by Officer Simon's squad car, got off of the skateboard and started to walk down a sidewalk from the road. Officer Zubke commanded, "Get on the ground," while pulling his taser from his duty belt, which was identifiable by the yellow rim in the video. Mr. Whitten was still walking/running away from officers, on the grass, close to a building. Mr. Whitten turned to face Officer Simon, so his back was to the building and his left side was facing Officer Zubke. As Mr. Whitten turned, he pulled a black object from his right side with his right hand. Officer Zubke commanded, "Get your hand out of your pocket right now," while he dropped his taser and pulled out his duty weapon. Officer Simon said, "Get on the ground," Officer Zubke started running backwards and said, "He's got ... gun, gun, gun!" Two gun shots were heard at 3:50:28pm. Mr. Whitten fell. Officer Zubke lowered his firearm. Officer Zubke said, "shots fired, shots fired." Officer Simon could be heard saying, "Don't move, put your hands up."

Mr. Whitten raised one of his hands. Officers approached. As they approached, they told Mr. Whitten to roll away from the gun. He rolled onto his back. Officer Zubke told other officers where they were via radio. Sirens could be heard. Officers Zubke and Simon approached Mr. Whitten. Officer Simon moved the gun further away from Mr. Whitten on the ground and then stood back. Other officers arrived on scene. Mr. Whitten was handcuffed. Officers, including Officer Zubke started rendering aid, including CPR.

Officer James Simon's audio/visual body camera footage from 10/18/23 shows:

At approximately 3:50:20 pm, he arrived on scene in his squad car. He parked and started to get out in one fluid motion. As soon as Officer Simon was out of the squad car, he held his duty weapon in both hands, pointed at Mr. Whitten. He commanded, "Get on the ground! Get on the ground!" Mr. Whitten was visibly handling something with both of his hands near the right side of his body. He was pointing that object in the direction of Officers Simon and Zubke. Officer Zubke can be heard saying, "Gun, gun!" There were three people wearing back packs, who had just exited the building behind Mr. Whitten, walking on the sidewalk away from Officer Simon.

Officer Simon fired two shots at 3:50:28pm. Mr. Whitten fell. Officer Zubke could be heard reporting, "Shots fired, shots fired." Officer Simon commanded, "Don't move, put your hands up." Officer Simon continued to hold his firearm in both of his hands, pointed at Mr. Whitten. Officer Simon also told the people who were around to, "Get inside." He again told Mr. Whitten "Put your hands up."

As he approached Mr. Whitten, Officer Simon said, "Roll away from the gun, if you can. Roll away from the gun. Do not make any moves towards that gun," as he walked forward toward Mr. Whitten, still with his firearm raised. As he got closer, he said, "Stay right there. Don't move,"

while he reached for the gun that was lying a little more than one foot away from Mr. Whitten's right hand. As Officer Simon moved the gun away from Mr. Whitten, he said, "We're going to help you bud, we're going to help 'ya."

Officer Simon then stood back while other officers arrived on scene and rendered aid.

On 10/19/23 a Special Agent with DCI attended the Autopsy of Justin C. Whitten, at the Milwaukee County Medical Examiner's Office performed by Deputy Chief Medical Examiner P. Douglas Kelly, MD. The cause of death was determined to be a gunshot wound to the chest.

For these reasons, I find the facts in this case do not support probable cause to believe Officer Simon or Officer Zubke committed a crime.

Monica J. Hall  
District Attorney  
Jefferson County, WI